IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

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J U D G M E N T

1. S.B. CIVIL SECOND APPEAL NO.219/2005- LRS OF DECEASED PRATAP RAI VS. NARENDRA KUMAR AGAINST THE DECREE AND JUDGMENT DATED 23.9.2004 IN CAD NO.1/01 PASSED BY SH. PANKAJ BHANDARI, RHJS, ADDL. DISTRICT JUDGE NO.3, JODHPUR.

2. S.B. CIVIL SECOND APPEAL NO.163/2005- TULSIDAS VS. NARENDRA KUMAR AGAINST THE DECREE AND JUDGMENT DATED 23.9.2004 IN CAD NO.28/2000 PASSED BY SH. PANKAJ BHANDARI, RHJS, ADDL. DISTRICT JUDGE NO.3, JODHPUR

DATE OF JUDGMENT : 4th August, 2005.

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

REPORTABLE

Mr.GR Singhvi, the appellant.
Mr.RR Nagori,for the respondent.

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BY THE COURT:

Heard learned counsel for the appellant as well as learned counsel for the respondent.

According to learned counsel for the appellant, plaintiff filed the suit for recovery of

possession alleging that the suit premises has not been used by the tenant-appellant since last six years and, therefore, the plaintiff is entitled for decree for eviction of his tenant from the rented premises. According to learned counsel for the appellant the defendant-appellant specifically raised a ground that the suit is barred by time. The first appellant court also took note of this argument, but rejected the appellant's plea on the ground that objection has not been taken by the defendant in the written statement.

According to learned counsel for the appellant the cause of action accrued to the plaintiff immediately on expiry of six months period for which according to plaintiff the defendant did not use the premises for the purpose for which it was let out. According to learned counsel for the defendant-appellant since the plaintiff in his plaint itself specifically stated that the defendant-tenant is not using the premises since last six years, therefore, admittedly, the cause of action accrued to the plaintiff for filing the suit five years and six months ago from the date of filing of the suit. According to learned counsel for the appellant-defendant-tenant, suit against tenant for eviction can be filed only within a period of three years

from the date of accrual of cause of action for filing the suit for eviction of tenant. According to learned counsel for the appellant if the plaintiff's own case is taken true even then the defendant stopped using the premises six years ago. After six months, thereafter, cause of action accrued to the plaintiff for seeking decree for eviction against the defendant-tenant and limitation started running for filing suit and limitation expired after three years thereafter, which comes upto only three years and six months from first date of or start of non-user by the defendant. Therefore, according to learned counsel for the appellant-tenant suit filed after six years from the date of non-user of the rented premises by the tenant is barred by time.

I considered the submissions of learned counsel for the appellant to find out whether the suit filed by the plaintiff was barred by time or not. It will be worthwhile to mention that the suit has been filed by the landlord against his tenant for recovery of possession under sub-clause (j) of sub-section (1) of Section 13 of the Act of 1950, which reads as under: -

> "13. Eviction of tenants-(1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree; or make any order, in favour of a

landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied-

(a) *** *** ***

(b) *** *** ***
(c) *** *** ***
(d) *** *** ***
(e) *** *** ***
(f) *** *** ***
(g) *** *** ***
(h) *** *** ***
(i) *** *** ***
(j) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

(k) *** *** ***

(l) *** *** ***"

It is clear from bare reading of sub-clause (j) of sub-section (1) of Section 13 that a consolidated period of non-user of six months of the premises by the tenant gives a cause for filing suit against the tenant by the landlord. Each consolidated period of six months therefore, constitute a separate cause of action as it relates to different period of tenancy. Therefore, after first six months of non-user of the premises by the tenant if a suit for eviction is not filed within three years by the landlord then assuming for the sake of argument that that cause of action cannot be

made actionable by the landlord on the ground that his remedy has become barred by time, but that bar applies to the period for which cause accrued to the landlord and not for the period for which no cause accrued. Therefore, in this case, also the non-user of the premises for six months immediately preceding the date of filing of the suit is a cause on the basis of which the suit is within limitation and this way if we go backward of the cause of actions, on completion of six month's non-user of the premises by the tenant, the suit falls within limitation for recovery of possession. Apart from above reason, even if non-user of the premises by the tenant for six months is a ground for eviction then that gives rise to different causes of actions for different periods of non-users. The non-user of the premises by the tenant for six months and plaintiff's non-filing the suit for recovery of possession from the tenant cannot give right to tenant to take a defence that since for one cause of action, the plaintiff did not file the suit for possession, the plaintiff lost his right for subsequent cause of action nor the tenant can claim that a right accrued in his favour and he can remain tenant in the premises without using the premises for the purpose for it was let out to him. Therefore, I do not find that the court below even

if has not decided the issue of limitation raised by the defendant, still there is no force in the argument of learned counsel for the appellant that the suit filed by the plaintiff was barred by time.

The two courts below concurrently recorded the finding of fact in favour of the plaintiff and against the defendant-appellant after appreciation of the evidence and I do not find that the finding is vitiated by any reason. Therefore, there is no merit in the appeal. Hence, the appeal of the appellant is liable to be dismissed, hence, dismissed.

At this stage, learned counsel for the appellant prays that appellants may be given some time to vacate the suit premises as they are the old tenant in the house and they will have to make some appropriate arrangement for their residence. Learned counsel appearing for the respondent pointed out that the suit was filed in the year 1982 and much time has already passed. Therefore, the long time as prayed by learned counsel for the appellant of two years may not be granted.

Looking to the entirety of the facts, it will be just and proper to permit the tenants to occupy

the premises in question upto the period of 31st July, 2006 and, therefore, the decree under challenge shall not be executed till 1st August, 2006 on the condition that appellants shall furnish a written undertaking before the trial court within a period of one month from today that he shall vacate the premises and shall hand over the vacant possession of the suit premises to the landlord on or before 31st July, 2006 and shall pay all the arrears of rent and decretal amount, if due, within a period of two months from today and shall further pay future rent upto the period he vacates the premises month by month by 15th day of each succeeding month of the tenancy. In case of non-compliance and any default of this order, the decree shall become executable forthwith.

(PRAKASH TATIA), J.

c.p.goyal/-